SUPREME COURT OF THE UNITED STATES.

No. [illegible]

BARTHOLD SCHLESINGER ET AL., APPELLANTS,

v.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 254.

BARTHOLD SCHLESINGER ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 To the honorable justices of the Court of Claims, holden at Washington, in the District of Columbia:

Respectfully represent Barthold Schlesinger and Edward B. Huntington, of Boston, in the commonwealth of Massachusetts, William L. King and M. J. O'Connor, of New York, in the State of New York, Edmund L. S. Benzon, Edward Vickers, George P. Naylor, and Frederick Lehmann, of Sheffield, in the United Kingdom of Great Britain and Ireland, and George Naylor Vickers, of Stockholm, in the kingdom of Sweden, merchants, partners, doing business at said Boston and New York under the style of Naylor & Company.

That from the month of November, 1847, to the month of July, 1854, inclusive, they imported from the said kingdom of Sweden into the United States, to wit, into the ports of Boston and New York, certain merchandize, to wit, bar iron and steel, and that the same was subject to an import duty, which was levied and paid thereon to the United States; but that the same was erroneously computed as hereafter is more particularly set forth.

That the said merchandize was valued in the invoice thereof in rix dalers banco, a paper currency of the State Bank of Sweden, known and recognized by the laws and royal ordinances of that kingdom as legal money in payment and account, having a legal and fixed value throughout the realm, the said rix daler banco being a component part of the specie dollar of said kingdom, and bearing the invariable relation to the same of two and two thirds to one, ($2\frac{2}{3}$ to 1;) that is to say, two and two thirds ($2\frac{2}{3}$) rix dalers banco being invariably equivalent to one specie dollar, and of the value of thirty-nine and three fourths cents ($39\frac{3}{4}$) of the currency of the United States; the value of said specie dollar being fixed by the act of Congress of May 2, 1846, at one hundred and six cents ($1 06) of the currency of the United States. Wherefore your petitioners aver that when the said invoice valuation of said merchandize so invoiced in rix dalers banco was changed into its equivalent value in the currency of the United States, as by law is required, for the purpose of computing the duties thereon, the said rix daler banco should have been computed at its fixed legal value in said kingdom of Sweden, and at its equivalent of thirty-nine and three fourths cents ($39\frac{3}{4}$) in the currency of the United States.

That the American consuls at the Swedish ports of Stockholm and Gefle always so computed it, but that the American consuls at the Swedish port of Gottenburg, disregarding the legal value of the said rix daler banco as above set forth, but treating it as a depreciated currency, computed the value thereof in their certificates, (which, by the act of Congress of March 2, 1799, sec. 61, and by treasury instructions issued in pursuance thereof, they are required to furnish to importers, of the true value of the currency in which said merchandize is invoiced at the place of the shipment thereof, where such currency is depreciated or has no fixed value,)at rates varying with the indirect rates of exchange—there being no direct rate of exchange between said kingdom of Sweden and the United States—thereby varying the value of the rix daler banco on which duties were assessed from its true value of thirty-nine and three fourths cents ($39\frac{3}{4}$) to an erroneous value of forty-two cents, (42,) as will more specifically appear by reference to the exhibits marked A and B, hereunto annexed.

And your petitioners further say that the true dutiable value of the said merchandize, imported by them into the said ports of Boston and New York during the time aforesaid, was, computing the rix daler banco at its true, legal, and fixed value, equivalent to thirty-nine and three fourths cents ($39\frac{3}{4}$) of the currency of the United States, one million two hundred and thirty-three thousand two hundred and nine dollars and eighty-three cents ($1,233,209 83;)

but that the valuation, by reason of the said erroneous computation
2 of the value of the said rix daler banco, was one million two hundred and sixty-five thousand seven hundred and thirty-five dollars and thirty-four cents, ($1,265,735 34,) being an excess above the true dutiable value of thirty-two thousand five hundred and twenty-five dollars and forty-one cents, ($32, 525 41,) and that the amount of duties exacted on said excess above the true value was, at the said port of Boston, five thousand two hundred and sixty-six dollars and fifty-four cents, ($5,266 54,) and at the said port of New York, four thousand, three hundred and forty-three dollars and twenty-four cents, ($4,343 24,)amounting in all to the sum of nine thousand six hundred and nine dollars and seventy-eight cents, ($9,609 78,) which was erroneously and against law exacted by, and paid as and for duties to, the United States; and which, your petitioners respectfully submit, the said United States ought not to keep, but that in equity and good faith the same ought to be returned to your petitioners, although they did not pay the same under a protest in writing.

And your petitioners further say that on the 25th day of February, 1854, they addressed a letter, a copy of which is hereto annexed, to the Hon. James Guthrie, Secretary of the Treasury of the United States, calling the attention of his department to the same, and requesting him to instruct the collector of the customs for the port of Boston to the effect that no consular certificate is required by law as regards the equivalent of the Swedish to the American currency, and also requesting him to cause to be refunded to them the excess of duty paid by them on importations from the Swedish port of Gottenburg in consequence of a valuation of the Swedish currency higher than that authorized by law. And your petitioners further say that thereafterwards the said Secretary of the Treasury, by treasury instruction of Oct. 2, 1855, Gen. Reg. No. 63, p. 26, did instruct the collectors of the customs for the several ports of the United States as follows, viz:

"The value of the specie dollar of Sweden and Norway having been fixed by act of Congress of the 2d of May, 1846, at 106 cents United States currency, and the rix dollar banco of Sweden and Norway being a component part of their specie dollar, and in the invariable proportion of $2\frac{1}{3}$ ($2\frac{3}{5}$?) to 1, and consequently equal to $39\frac{3}{4}$ cents United States currency, the rix dollar banco of Sweden and Norway will, therefore, be taken in computations at the custom-houses, at the rate of $39\frac{3}{4}$ cents United States currency, and no consular currency certificate will be required, unless the currency should be depreciated."

And the said Secretary of the Treasury further directed a statement of your petitioners' (claim, copies of which, marked A and B, are hereunto annexed,) to be made up and submitted to him, which your petitioners aver was done, but the same was disallowed by said Secretary, solely, as they believe, because the said moneys were not paid under a protest in writing, according to the provisions of the act of Congress of Feb. 26, 1845. And your petitioners further say, that other payments made by them of a character precisely the same, but which were paid under a protest in writing, the said Secretary of the Treasury caused to be refunded to them.

By reason of all which your petitioners submit that a contract is implied on the part of the United States to repay to them the said sums so illegally exacted. Wherefore they pray that they may be allowed to submit their proofs, and be further heard in the premises; and that your honors will report a bill to Congress to the end that the said amount so claimed by your petitioners may be refunded to them, and of which your petitioners aver they are the owners in manner and form as aforesaid.

Exhibit A.

Statement of duties erroneously exacted in excess on iron and steel, imported by Messrs. Naylor & Co., invoiced in the rix banco of Sweden and Norway.—Statement issued under special instructions of department, Oct. 2d, 1855.

No. of entry.	Date of entry.	No. of manifest.	Name of vessel.	Where from.	Amount in rix bancos on which duty was paid.	Rate of exchange.	Am't on which duty was paid.	Rate per cent. of duty.	Am't of duty paid.	Rix bancos at 38¾ cts.	Am't of duty which should have been paid.	Amount due Messrs. Naylor & Co.
1	Nov., 1847	2,456	Superior	Gothenburg	43,589 03	$0 40	$17,435 60	30	$5,230 68	$17,326 63	$5,198 10	$32 58
2	do	2,566	Seboois	do	10,762 24	40	4,305 00	30	1,291 50	4,277 89	1,283 40	8 10
3	May, 1848	893	Hebe	do	28,219 00	40	11,287 69	30	3,386 31	11,217 05	3,365 10	21 21
4	Nov , 1848	2,656	Lanerk	London	7,577 46	40	3,031 20	30	909 35	3,012 25	903 60	5 70
5	April, 1849	451	Emily Farnham	Gothenburg	16,684 39	40	6,674 00	30	2,002 20	6,632 29	1,989 60	12 60
6	Dec., 1849	3,007	Regatta	do	1,679 17	40	672 00	15	100 80	667 40	100 05	75
6	do	3,007	do	do	28,587 21	40	11,435 00	30	3,430 50	11,363 33	3,408 90	21 60
7	Jan., 1850	53	Swan	do	13,453 26	40	5,381 00	30	1,614 30	5,347 57	1,604 40	9 90
8	do	53	do	do	2,533 41	40	1,022 00	30	306 60	1,015 21	304 50	2 10
9	do	53	do	do	21,504 35	40	8,602 00	30	2,580 60	8,548 24	2,564 40	16 20
10	do	53	do	do	6,368 38	40	2,548 00	30	764 40	2,531 68	759 60	4 80
11	June, 1850	955	Alida	do	47,998 24	40	19,199 00	30	5,759 70	19,079 20	5,723 70	36 00
11	do	955	do	do	5,417 14	40	2,179 00	15	326 85	2,165 18	324 75	2 10
12	do	1,032	Victoria	do	64,703 16	40	25,881 00	30	7,764 30	25,719 44	7,715 70	48 60
13	do	1,032	do	do	6,426 00	40	2,570 00	30	771 00	2,554 33	766 20	4 80
14	do	1,032	do	do	4,635 36	40	1,854 00	30	556 20	1,842 41	552 60	3 60
15	July, 1850	1,206	Minona	do	6,250 00	40	2,500 00	30	750 00	2,484 37	745 20	4 80
16	do	1,206	do	do	8,087 00	40	3,235 00	30	970 50	3,214 58	964 50	6 00
17	do	1,229	Ann & Maria	do	5,217 36	40	2,087 00	15	313 05	2,074 15	311 10	2 95
17	do	1,229	do	do	35,740 16	40	14,296 00	30	4,288 40	14,206 65	4,262 10	6 70
18	do	1,229	do	do	6,851 47	40	2,741 00	30	822 30	2,723 67	817 20	5 10
19	Aug., 1850	1,812	Laurvig	do	135 38	40	54 00	30	16 20	54 06	16 20	.....
20	do	1,812	do	do	11,715 36	40	4,686 00	30	1,405 80	4,657 11	1,397 10	8 70
21	do	1,812	do	do	13,453 06	40	5,381 00	30	1,614 30	5,347 57	1,604 40	9 90
22	do	1,812	do	do	12,018 06	40	4,807 00	30	1,442 10	4,777 15	1,433 10	9 00
23	do	1,812	do	do	1,301 36	40	521 00	30	156 30	517 54	155 40	90
24	Sept., 1850	1,922	Bellona	do	24,290 00	40	9,716 00	30	2,914 80	9,655 27	2,896 50	18 30
25	do	1,922	do	do	9,500 00	40	3,800 00	30	1,140 00	3,776 25	1,132 80	7 20
26	Oct., 1850	2,184	New York	do	5,828 15	40	2,331 00	30	699 30	2,316 63	695 10	4 20
27	do	2,184	do	do	6,497 21	40	2,599 00	30	779 70	2,582 56	774 90	4 80
28	do	2,184	do	do	28,832 35	40	11,533 00	30	3,459 90	11,461 12	3,438 30	21 60
29	do	2,184	do	do	6,630 37	40	2,652 00	30	795 60	2,645 82	790 80	4 80
30	Nov., 1850	2,548	Minona	do	6,695 26	40½	2,712 00	30	813 60	2,661 66	798 60	15 00
31	do	2,548	do	do	13,325 00	40½	5,397 00	30	1,619 10	5,296 69	1,589 10	30 00
32	Jan., 1851	21	Rhone	do	20,316 24	40½	8,241 00	30	2,472 30	8,087 93	2,426 40	45 90
33	do	21	do	do	7,495 38	40½	3,036 00	20	607 20	2,979 66	596 00	11 20

EXHIBIT A—Continued.

No. of entry.	Date of entry.	No. of manifest.	Name of vessel.	Where from.	Amount in rix bancos on which duty was paid.	Rate of exchange.	Am't on which duty was paid.	Rate per cent. of duty.	Am't of duty paid.	Rix bancos at 39¼ cts.	Am't of duty which should have been paid.	Amount due Messrs. Naylor & Co.
34	Jan., 1851	21	Rhone	Gothenburg	19,842 00	40½	$8,036 00	30	$2,410 80	$7,887 19	$2,366 10	$44 70
34	do	21	do	do	6,304 00	40½	2,553 00	20	510 60	2,505 84	501 20	9 40
35	do	21	do	do	10,409 00	40½	4,216 00	30	1,264 80	4,137 58	1,241 40	23 40
35	do	21	do	do	568 00	40½	230 00	20	46 00	225 78	45 20	80
36	June, 1851	980	Adolph	do	13,716 37	41	5,624 00	30	1,687 20	5,452 51	1,635 90	51 30
37	do	980	do	do	7,141 59	41	2,928 00	30	878 40	2,838 94	851 70	26 70
38	do	980	do	do	7,293 43	41	2,990 00	30	897 00	2,899 36	869 70	27 30
39	do	1,026	Minona	do	9,888 47	41	4,054 00	30	1,216 20	3,930 88	1,179 30	36 90
40	do	1,026	do	do	6,286 00	41	2,577 00	30	773 10	2,498 68	749 70	23 40
41	July, 1851	1,243	Ambrosius	do	11,093 27	41	4,549 00	30	1,364 70	4,409 86	1,323 00	41 70
42	do	1,243	do	do	815 46	41	335 00	30	100 50	324 36	97 20	3 30
43	do	1,243	do	do	7,187 00	41	2,947 00	30	884 10	2,856 83	857 10	27 00
44	do	1,243	do	do	8,172 09	41	3,351 00	30	1,005 30	3,248 37	974 40	30 90
45	do	1,243	do	do	6,527 27	41	2,676 00	30	802 80	2,594 88	778 50	24 30
46	do	1,349	Cazone	do	25,725 07	41	10,547 00	30	3,164 10	10,225 69	3,067 80	86 30
46	do	1,349	do	do	701 38	41	288 00	15	43 20	279 04	41 85	1 35
47	do	1,349	do	do	3,020 24	41	1,239 00	30	371 70	1,200 85	360 30	11 40
47	do	1,349	do	do	389 19	41	159 00	15	23 85	154 63	23 25	60
48	do	1,349	do	do	23,160 09	41	9,496 00	30	2,848 80	9,206 10	2,761 80	87 00
49	do	1,349	do	do	2,175 00	41	892 00	30	267 60	864 56	259 50	8 10
50	do	1,349	do	do	633 00	41	260 00	30	78 00	251 62	75 60	2 40
51	Aug., 1851	1,684	Svea	do	20,000 00	41	8,200 00	30	2,460 00	7,950 00	2,385 00	75 00
52	do	1,813	Hampton	London	3,778 52	41	1,549 00	30	464 70	1,502 15	450 60	14 10
53	Sept., 1851	1,928	Jeddo	Gothenburg	12,662 06	41	5,191 00	15	778 65	5,033 14	754 95	23 70
54	Nov., 1851	2,711	Montreal	do	5,998 00	41	2,459 00	30	737 70	2,384 20	715 20	22 50
55	do	2,711	do	do	10,476 00	41	4,295 00	30	1,288 50	4,164 21	1,249 20	39 30
55	do	2,711	do	do	5,088 00	41	2,086 00	15	312 90	2,022 48	303 30	9 60
56	do	2,869	Stals Radet Fahren	do	9,339 00	41	3,829 00	30	1,148 70	3,712 25	1,113 60	35 10
57	March, 1852	226	Junius	London	1,614 23	41	662 00	15	99 30	641 56	96 30	3 00
58	June, 1852	807	Jarlin	Gothenburg	48,847 00	41	20,027 00	30	6,008 10	19,416 68	5,825 10	183 00
59	do	910	Prins Carl	do	56,720 20	41	23,255 00	30	6,976 50	22,546 20	6,763 80	312 70
60	do	1,040	Gotha	do	13,528 00	41	5,546 00	30	1,663 80	5,377 38	1,613 10	50 70
61	do	1,114	Minona	do	12,712 18	41	5,212 00	30	1,563 60	5,053 02	1,515 90	47 70
62	July, 1852	1,202	Urda	do	22,631 00	41	9,279 00	30	2,783 70	8,995 82	2,698 80	84 90
63	Aug., 1852	1,597	Gov. Hinkley	do	52,710 00	41	21,611 00	30	6,483 30	20,952 22	6,285 60	197 70
64	do	1,694	Anna Margaretha	do	17,707 00	41	7,260 00	30	2,178 00	7,033 53	2,111 70	66 30
65	do	1,811	Carl Johan	do	20,367 39	41	8,351 00	30	2,505 30	8,096 28	2,428 80	76 50
66	Oct., 1852	2,350	Tanaro	do	18,982 00	41	7,783 00	30	2,334 90	7,545 34	2,263 50	71 40
66	do	2,350	do	do	1,144 10	41	469 00	15	70 35	454 74	68 25	2 10
67	do	2,350	do	do	5,783 11	41	2,371 00	30	711 30	2,298 74	689 70	21 60

68	... do.....	2,350	....do.....	....do.....	6,314 00	41	2,589 00	30	776 70	2,509 81	753 00	23 70
68	....do.....	2,350	....do.....	....do.....	1,778 34	41	729 00	15	109 35	707 15	106 05	3 30
69	....do.....	2,354	Andovu.....	....do.....	78,383 30	41	32,137 00	30	9,641 10	31,157 64	9,347 40	293 70
70	April, 1853.....	423	R. B. Porter..	London.....	5,992 24	41½	2,487 00	30	746 10	2,382 22	714 60	31 50
71	....do.....	427	Austin.....	Gothenburg.....	12,341 00	41	5,060 00	30	1,518 00	4,905 55	1,471 80	46 20
71	... do.....	437	....do.....	....do.....	13,117 00	41	5,378 00	15	806 70	5,214 01	782 10	24 60
72	....do.....	437	....do.....	....do.....	5,371 00	41	2,202 00	30	660 60	2,134 97	640 50	20 10
73	....do.....	437	....do..	....do.....	24,698 00	41	10,126 00	30	3,037 80	9,817 45	2,945 10	92 70
74	July, 1853.....	1,369	Minona.....	....do.....	14,825 25	41	6,078 00	30	1,823 40	5,893 33	1,767 90	55 50
75	Aug., 1853.....	1,719	Christiana.....	....do.....	33,776 00	41	13,848 00	30	4,154 40	13,425 96	4,027 80	126 60
76	....do.....	1,867	Staffordshire.....	Liverpool.....	405 06	41	164 00	30	49 20	160 99	48 30	90
76	....do.....	1,867	....do.....	....do.....	748 10	41	321 00	15	48 15	311 64	46 80	1 35
77	....do.....	1,881	P. Pendleton.....	London.....	14,352 02	41	5,884 00	30	1,765 20	5,704 92	1,711 50	53 70
78	Sept., 1853.....	2,020	Broderine.....	Gothenburg.....	6,117 00	41	2,508 00	30	752 40	2,431 51	729 60	22 80
79	....do.....	2,020	...do.....	....do.....	21,866 00	41	8,965 00	30	2,689 50	8,691 73	2,607 60	81 90
79	....do.....	2,020	....do.....	....do.....	5,790 00	41	2,374 00	15	356 10	2,301 52	345 30	10 80
80	....do.....	2,020	....do.....	... do.....	39,141 00	41	16,048 00	30	4,814 40	15,558 55	4,667 70	146 70
82	....do.....	2,238	Pyramid.....	Stockholm*.....	43,309 36	41½	17,973 00	30	5,391 90	17,215 72	5,164 80	227 10
83	....do.....	2,245	Lexington.....	Gothenburg.....	17,167 37	41	7,039 00	30	2,111 70	6,824 28	2,047 20	64 50
84	....do.....	2,245	....do.....	... do.....	40,794 27	41	16,727 00	30	5,018 10	16,216 01	4,864 80	153 30
85	....do.....	2,245	...do	....do	53,254 00	41	21,834 00	30	6,550 20	21,168 46	6,350 40	199 80
86	....do.	2,245	....do.....	. ..do.....	9,887 00	41	4,054 00	30	1,216 20	3,930 08	1,179 00	37 20
86	.....do.....	2,245	....do.....	....do.....	334 08	41	137 00	15	20 55	132 76	19 95	60
87	Oct., 1853.....	2,377	Sewall.....	....do.....	28,034 00	41½	11,634 00	30	3,490 20	11,143 51	3,343 20	147 00
88	....do.....	2,377	....do.....	....do.....	6,005 00	41½	2,492 00	30	747 60	2,386 99	716 10	31 50
89	....do.....	2,377	.. do.....	....do.....	40,068 00	41½	16,628 00	30	4,988 40	15,927 03	4,778 10	210 30
90	....do.....	2,377	....do.....	....do.....	13,945 00	41½	5,787 00	30	1,736 10	5,543 14	1,662 90	73 20
91	....do.....	2,377	....do.....	....do.....	10,747 00	41½	4,460 00	30	1,338 00	4,271 93	1,281 60	56 40
92	....do.....	2,570	Sagadahock.....	....do.....	18,456 00	41½	7,659 00	30	2,297 70	7,336 26	2,200 80	96 90
92	....do.....	2,570	....do.....	....do.....	12,007 00	41½	4,983 00	15	747 45	4,772 78	715 95	31 50
93	....do.....	2,570	....do.....	....do.....	40,877 00	41½	16,961 00	30	5,089 20	16,248 61	4,874 70	214 50
93	....do.....	2,570	....do.....	....do.....	3,479 00	41½	1,444 00	15	216 60	1,382 90	207 45	9 15
94	Jan., 1854.....	67	Neptune.....	Liverpool.....	6,104 00	41½	2,553 00	30	759 90	2,426 34	727 80	32 10
95	March, 1854.....	290	Prospero.....	London.....	11,573 00	41½	4,803 00	30	1,440 90	4,600 27	1,380 00	60 90
96	April, 1854.....	374	Arvum.....	....do.....	8,222 00	41½	3,412 00	30	1,023 60	3,268 24	980 40	43 20
103	....do.....	522	Medallion.....	....do.....	7,588 00	42	3,187 00	30	956 10	3,016 23	904 80	51 30
104	... do.....	522	....do.....	....do.....	4,915 00	41½	2,040 00	30	612 00	1,953 71	586 20	25 80
104	....do.....	522	....do.....	....do.....	808 29	41½	336 00	15	50 40	321 58	48 30	2 10
109	May, 1854.....	841	Minona.....	Gothenburg.....	13,102 29	42	5,503 00	30	1,650 90	5,208 44	1,562 40	88 50
109	...do.....	841	...do.....	....do.....	2,843 00	42	1,914 00	15	179 10	1,137 09	169 50	9 60
111	July, 1854.....	1,293	Jenny	....do.....	15,675 00	41½	6,505 00	30	1,951 50	6,230 81	1,869 30	82 20
							712,029 49				203,151 00	5,266 54

*Soderhamm via. Stockholm.

Statement of duties erroneously exacted in excess on iron and steel, imported by Messrs. Naylor & Co., invoiced in the rix banco of Sweden and Norway.—Statement issued under special instructions of department, Oct. 2d, 1855.

No. of entry.	Date of entry.	No. of manifest.	Name of vessel.	Where from.	Amount in rix bancos on which duty was paid.	Rate of exchange.	Am't on which duty was paid.	Rate per cent. of duty.	Am't of duty paid.	Rix bancos at 38¾ cts.	Am't of duty which should have been paid.	Amount due Messrs. Naylor & Co
	Jan., 1848	.....	Actif	Gothenburg	3,886 00	$0 40	$1,554 40	30	$466 20	$1,544 69	$463 50	$2 70
	Feb., 1848	.....	George Fletcher	do	8,053 00	40	3,221 20	30	966 30	3,201 07	960 30	6 00
	March, 1848	.....	Prince Albert	do	2,202 00	40	880 80	30	264 30	875 30	262 50	1 80
	Aug., 1848	.....	Thracian	do	25,440 00	40	10,176 00	30	3,052 80	10,112 40	3,033 60	19 20
	do	.....	do	do	43,991 00	40	17,596 40	30	5,278 80	17,486 43	5,245 80	33 00
	Feb., 1849	.....	Arguila	do	18,322 00	40	7,328 80	30	2,198 70	7,283 00	2,184 90	13 80
	May, 1849	.....	Alfen	do	15,345 00	40	6,138 00	30	1,841 40	6,099 64	1,830 00	11 40
	Feb., 1849	.....	Arguila	do	49,844 00	40	19,937 60	30	5,981 40	19,812 99	5,943 90	37 50
	Sept., 1849	.....	Themis	do	9,281 00	40	3,712 40	30	1,113 60	3,689 20	1,106 70	6 90
	May, 1850	.....	John	do	17,887 00	40	7,154 80	30	2,146 50	7,110 09	2,133 00	13 50
	do	.....	do	do	19,523 00	40	7,809 20	30	2,342 70	7,760 40	2,328 00	14 70
	do	.....	do	do	10,036 00	40	4,014 40	30	1,204 20	3,989 31	1,196 70	7 50
	do	.....	do	do	3,305 00	40	1,322 00	30	396 60	1,313 74	349 20	2 40
	do	.....	do	do	5,238 00	40	2,095 20	30	628 50	2,082 11	624 60	3 90
	Aug., 1850	.....	Excellent	do	18,310 00	40	7,324 00	30	2,197 20	7,278 23	2,183 40	13 80
	do	.....	Victor	do	30,252 00	40	12,100 80	30	3,630 00	12,025 17	3,607 50	22 50
	Sept., 1850	.....	Ageir	do	23,554 00	40	9,421 60	30	2,826 60	9,362 72	2,768 90	17 70
	do	.....	Nordpolen	do	8,416 00	40	3,366 40	30	1,009 80	3,345 36	1,003 50	6 30
	do	.....	Themis	London	19,858 00	40	7,943 20	30	2,382 90	7,893 56	2,368 20	14 70
	Jan., 1851	.....	F. Paterson	Gothenburg	1,878 00	40½	760 59	30	228 30	746 51	224 10	4 20
	do	.....	do	do	6,617 00	40½	2,679 88	30	804 00	2,630 26	789 00	15 00
	do	.....	do	do	12,961 00	40½	5,249 20	30	1,574 70	5,152 00	1,545 60	29 10
	do	.....	do	do	7,224 00	40½	2,925 72	30	877 80	2,871 54	861 60	16 20
	April, 1851	.....	American Eagle	London	3,251 00	40½	1,316 65	30	395 10	1,292 28	387 60	7 50
	do	.....	Skane	Gothenburg	16,644 00	41	6,824 04	30	2,047 20	6,615 99	1,984 80	62 40
	do	.....	do	do	779 00	41	319 39	30	95 70	309 66	93 00	2 70
	do	.....	do	do	26,740 00	41	10,963 40	30	3,288 90	10,629 15	3,188 70	100 20
	do	.....	do	do	5,271 00	41	2,161 11	30	648 30	2,095 23	628 50	19 80
	July, 1851	.....	Hebe	do	21,586 00	41	8,850 26	30	2,655 00	8,580 44	2,574 00	81 00
	do	.....	do	do	11,494 00	41	4,712 54	30	1,413 90	4,568 87	1,370 70	43 20
	do	.....	Ocean Queen	London	3,385 00	41	1,387 85	30	416 40	1,345 54	403 80	12 60
	do	.....	Julie	Gothenburg	11,629 00	41	4,767 89	30	1,430 40	4,622 53	1,386 90	43 50
	Sept., 1851	.....	Preciosa	do	16,512 00	41	6,769 92	30	2,031 00	6,563 52	1,969 20	61 80
	do	.....	Themis	do	7,431 00	41	3,046 71	30	914 10	2,953 83	886 20	27 90
	do	.....	do	do	16,504 00	41	6,766 66	30	2,030 10	6,560 34	1,968 00	72 10
	do	.....	Lulea	do	10,526 00	41	4,313 20	30	1,293 90	4,181 70	1,254 60	39 30

Oct., 1851	.....	Gotha	.. do	2,553 00	41½	1,059 49	30	317 70	1,014 82	304 50	13 20
Nov., 1851	.....	Hohenstanfer	Bremen	2,666 00	41	1,093 06	30	327 90	1,059 74	318 00	9 90
Aug., 1851	.....	Leontine	...do	3,467 00	41	1,421 47	30	426 30	1,378 14	413 40	12 90
Oct., 1851	.....	Augusta	Gothenburg	52,224 00	41	21,411 84	30	6,423 60	20,759 04	6,227 70	195 90
.....do	.....	...do	...do	1,734 00	41	710 94	30	213 30	689 27	206 70	6 60
Sept., 1851	.....	Lulea	...do	3,312 00	41	1,357 92	30	407 40	1,316 52	395 10	12 30
Nov., 1851	.....	Hohenstanfer	Bremen	10,134 00	41	4,154 94	30	1,246 50	4,028 27	1,208 40	38 10
Oct., 1851	.....	Gotha	Gothenburg	17,875 00	41	7,328 75	30	2,198 70	7,105 32	2,131 50	67 20
Sept., 1851	.....	Themis	....do	8,215 00	41	3,368 15	30	1,010 40	3,265 47	979 50	30 90
July, 1851	.....	Julie	...do	24,106 60	41	9,883 46	30	2,964 90	9,582 14	2,874 60	90 30
April, 1852	.....	Jenny	...do	20,752 00	41	8,508 32	30	2,552 40	8,248 92	2,474 70	77 70
May, 1852	.....	Preciosa	....do	12,976 00	41	5,320 16	30	1,596 00	5,157 96	1,547 40	48 60
.....do	....	William	....do	19,650 00	41	8,056 50	30	2,417 10	7,810 88	2,343 30	73 80
June, 1852	.....	Lulea	...do	1,709 00	41	700 69	30	210 30	679 33	203 70	6 60
.....do	.....	Guston	Bremen	6,106 00	41	2,503 46	30	750 90	2,427 14	728 10	22 80
.....do	.....	President Christie	Hamburg	6,809 00	41	2,791 69	30	837 60	2,706 58	812 10	25 50
July, 1852	.....	Java	....do	14,224 00	41	5,831 84	30	1,749 60	5,654 04	1,696 20	53 40
Jan., 1852	.....	Francisca	...do	12,274 00	41	5,032 34	15	754 80	4,978 92	746 85	7 95
July, 1852	.....	Selina	Gothenburg	8,849 00	41	3,628 09	30	1,088 40	3,517 48	1,055 10	33 50
.....do	.....	...do	....do	11,542 00	41	4,732 22	30	1,419 60	4,587 95	1,376 40	43 20
.....do	....	L'Industrie	....do	21,579 00	41	8,847 39	30	2,654 10	8,577 76	2,573 40	80 70
Dec., 1852	.....	Northumberland	London	3,318 00	41	1,360 38	30	408 00	1,318 91	395 70	12 30
Sept., 1852	.....	Globe	Gothenburg	10,276 00	41	4,213 16	30	1,263 90	4,084 71	1,225 50	38 40
Aug., 1852	.....	Androsin	....do	23,750 00	41	9,737 50	30	2,921 40	9,448 38	2,834 40	87 00
Sept., 1852	.....	Solide	....do	30,628 00	41	12,557 48	30	3,767 10	12,174 61	3,652 50	114 60
Dec., 1852	.....	Jason	Bremen	9,228 00	41	3,783 48	30	1,134 90	3,668 13	1,100 40	34 50
Sept., 1852	.....	Globe	Gothenburg	14,818 00	41	6,075 38	30	1,822 50	5,890 16	1,767 00	55 50
Jan., 1852	.....	Southampton	London	1,832 00	41	751 12	30	235 30	728 22	218 40	6 90
April, 1852	.....	Jenny	Gothenburg	2,372 00	41	972 52	30	291 90	942 87	282 90	9 00
May, 1852	.....	Preciosa	....do	18,453 00	41	7,565 73	30	2,269 80	7,335 07	2,200 50	69 30
.....do	.....	William	...do	3,543 00	41	1,452 63	30	435 90	1,408 35	422 40	13 50
June, 1852	.....	Anthusa	....do	10,941 00	41	4,485 81	30	1,345 80	4,349 05	1,304 70	41 10
.....do	.....	Ceres	Hamburg	6,918 00	41	2,836 38	30	850 80	2,749 91	825 60	25 80
.....do	.....	Maria	....do	4,494 00	41	1,842 54	30	552 90	1,786 37	535 80	17 10
.....do	.....	Wolf	....do	6,924 00	41	2,838 84	30	851 70	2,752 29	825 60	26 10
July, 1852	.....	Graf Von	Bremen	12,119 00	41	4,968 79	30	1,490 70	4,817 31	1,445 10	45 60
..... do	.....	L'Industrie	Gothenburg	11,630 00	41	4,768 30	30	1,430 40	4,622 93	1,386 90	43 50
Aug., 1852	.....	Superior	....do	14,895 00	41	6,106 95	30	1,832 10	5,920 77	1,776 30	55 80
June, 1852	.....	Lulea	....do	10,715 00	41	4,393 95	30	1,318 20	4,259 22	1,277 70	40 50
July, 1852	.....	Suea	....do	25,727 00	41	10,548 07	30	3,164 40	10,226 49	3,067 80	96 60
Sept., 1852	.....	Carlos	....do	3,512 00	41	1,439 92	30	432 00	1,396 02	418 80	13 20
June, 1853	.....	Jenny Pitts	....do	15,220 00	41	6,240 20	30	1,872 00	6,049 95	1,815 00	57 09
July, 1853	.....	Triton	....do	6,568 00	41	2,692 88	30	807 90	2,610 53	783 30	24 60
.....do	.....	Adonis	Bremen	11,965 00	41	4,905 65	30	1,471 80	4,756 09	1,426 80	45 00
.....do	.....	Lodebar	Gothenburg	11,674 00	41	4,786 34	30	1,435 80	4,639 42	1,391 70	44 10
.....do	.....	Sheridan	Liverpool	3,263 00	41	1,337 83	30	401 40	1,297 05	383 70	17 70
Aug., 1853	.....	Magdaline	Bremen	11,828 00	41	4,849 48	30	1,454 70	4,701 63	1,410 60	44 10
Sept., 1853	.....	Europa	...do	6,489 00	41	2,660 49	30	798 00	2,579 38	773 70	24 30
Oct., 1853	.....	Oder	Hamburg	12,512 00	41½	5,191 98	30	1,557 60	4,973 52	1,492 20	65 40
Nov., 1853	.....	Rhein	....do	7,438 00	41½	3,086 77	30	926 10	2,956 61	887 10	39 00
Dec., 1853	.....	Rastide	....do	15,109 00	41½	6,270 23	30	1,881 00	6,005 83	1,801 80	79 20
Aug., 1853	.....	Suea	Liverpool	6,562 00	41	2,690 42	30	807 00	2,608 40	782 40	14 60
June, 1853	.....	American Eagle	London	3,507 00	41	1,437 87	30	431 40	1,394 04	418 20	13 20

Exhibit B—Continued.

No. of entry.	Date of entry.	No. of manifest.	Name of vessel.	Where from.	Amount in rix bancos on which duty was paid.	Rate of exchange.	Am't on which duty was paid.	Rate per cent. of duty.	Am't of duty paid.	Rix bancos at 394 cts.	Am't of duty which should have been paid.	Amount due Messrs. Naylor & Co.
	July, 1853	....	Lodebar	Gothenburg	3,154 00	41	$1,293 14	30	$387 90	$1,253 72	$376 20	$11 70
	do	.....	Triton	do	10,127 00	41	4,151 07	30	1,245 20	4,025 49	1,207 50	37 80
	do	....	Republic	Bremen	12,478 00	41	5,015 98	30	1,504 80	4,960 01	1,488 00	16 80
	do	.....	Jenny Pitts	Gothenburg	22,152 00	41	9,082 32	30	2,724 60	8,805 42	2,641 50	83 10
	do	.....	Carlos	do	15,584 00	41	6,389 44	30	1,916 70	6,194 64	1,858 50	58 20
	do	.....	Sheridan	Liverpool	5,834 00	41	2,391 94	30	717 60	2,819 02	695 70	21 90
	Aug., 1853	.....	Samuel	Bordeaux	631 00	41	259 94	30	78 00	252 02	75 60	2 40
	Sept., 1853	....	Sir Robert Peel	Hamburg	2,557 00	41	2,638 12	30	791 40	2,557 52	767 40	24 20
	do	....	Europa	Bremen	1,494 00	41	799 09	30	239 70	774 73	232 50	7 20
	Oct., 1853	.....	Louisiana	Hamburg	5,258 00	41⅛	2,182 07	30	654 60	2,090 06	627 00	27 60
	do	.....	Julie	Bremen	3,320 00	41⅛	1,377 80	30	413 40	1,319 70	396 00	17 40
	Nov., 1853	....	Sea Lion	Hamburg	13,775 00	41⅛	5,716 62	30	1,715 10	5,475 57	1,642 80	72 30
	Dec., 1853	.....	Rastide	do	8,617 00	41⅛	3,576 05	30	1,072 80	3,425 26	1,027 50	45 30
	Nov., 1853	.....	Saint Louis	London	2,542 00	41⅛	1,054 93	30	316 50	1,010 45	303 00	13 50
	Dec., 1853	....	Nelson	Bremen	13,794 00	41⅛	5,724 54	30	1,717 50	5,483 12	1,644 90	72 60
	Jan., 1854	....	Hermine	do	7,153 00	41⅛	2,968 49	30	890 40	2,843 32	852 90	37 50
	do	....	Pribislav	Hamburg	9,464 00	41⅛	3,827 56	30	1,148 40	3,761 94	1,128 60	19 80
	March, 1854	.....	John Bates	London	2,462 00	41⅛	1,021 73	30	306 60	978 65	293 70	12 90
	Jan., 1854	.....	Lucy Thompson	Liverpool	1,245 00	41⅛	516 67	30	155 10	474 89	142 50	12 60
	do	.....	do	do	4,960 00	41⅛	2,058 40	30	617 40	1,971 60	591 60	25 80
	Feb., 1854	.....	Vanguard	do	8,540 00	41⅛	3,544 10	30	1,063 20	3,394 65	1,018 50	42 70
	March, 1854	.....	Christiana	London	4,026 00	42	1,690 92	30	507 30	1,600 34	480 00	27 30
	April, 1854	....	Northumberland	do	4,045 00	42	1,698 90	30	509 70	1,607 89	482 40	27 30
	May, 1854	.....	Virginia	Gothenburg	14,887 00	41¼	6,178 10	30	1,853 40	5,917 59	1,775 40	78 00
	do	.....	do	do	5,930 00	41¼	2,460 95	30	738 30	2,357 18	707 10	31 20
	do	.....	do	do	28,382 00	42	11,920 44	30	3,576 00	11,281 85	3,384 60	191 40
	do	.....	Lulea	do	10,443 00	42	4,386 06	30	1,315 80	4,151 10	1,245 30	70 50
	do	.....	Princess Louise	Hamburg	14,944 00	42	6,276 48	30	1,882 80	5,940 24	1,782 00	100 80
	June, 1854	.....	Elise	Bremen			553,705 85				160,970 75	4,343 24
			Amount for'd from Exhibit A									5,266 54
			Total									9,609 78

7 BOSTON, *Feb'ry* 25, 1854.

Honorable J. Guthrie, Secretary of the Treasury, Washington:

DEAR SIR: We beg leave to draw your attention to the act of Congress of May 22, 1846, pursuant to which the value of the "specie dollar of Sweden and Norway" is enacted to be invariable equal to 106 cents American currency.

The specie dollar (silver riks daler) is the common silver coin of said united kingdoms, and the fundamental standard of all their currency; but business transactions in Sweden are carried on in a paper currency called "riks dollars banco" and "riks geld." 1 specie dollar has 128 shillings banco; 1 riks dollar banco, 48 shillings banco; 1 dollar riks geld, 48 shillings riks geld, or 32 shillings banco; 1 specie dollar, $2\frac{2}{3}$ riks dollar banco; 1 specie dollar, 4 dollars riks geld.

These relations of the business currency to the specie or silver dollar are, throughout the kingdom of Sweden, always and invariably the same. $2\frac{2}{3}$ riks dollars banco are everywhere equal to 1 specie dollar, which we beg leave to prove through an official publication of Swedish laws, accompanying this letter, for your inspection, (see No 59, page 1 and 2,) and a verified translation of such portions of the law as allude to the subject, to be kept on the files of your department as a part of this communication.

We refer you further to a standard work on Swedish statistics, by Earl of Forsell, page 438, lines 10, 11, and 12, for proof of the same subject.

If we have proved the invariable relation of the Swedish riks dollar to be $2\frac{2}{3} = 1$, then the value of the riks dollar banco is also fixed by said act of Congress of May 22, 1846, to be $2\frac{2}{3}$ of 106, or equal to $39\frac{3}{4}$ cents.

The principal, and, we may say, almost only, places of export from Sweden to the United States are Stockholm, Gothenburg, and Gefle.

The American consuls at Stockholm and Gefle have, in certifying the invoices, always acted upon said law of Congress of May 22d, 1846; they have turned the invoice amount expressed (as the law requires) in the market value: riks dollars banco into dollars specie at the rate of $2\frac{2}{3}$ of the former to 1 of the latter, and then have valued the specie dollar at 106 cents, and riks dollar at $39\frac{3}{4}$ cents, which we beg leave to prove by documents B and C, accompanying this letter, for your inspection and return to us. We refer you, for further proofs of this having been the invariable course
8 of the American consuls at Stockholm and Gefle, to the invoices from said ports on file in the custom-house, both New York and Boston.

The American consul at Gothenburg could not have been cognizant of said act of Congress of May 22d, 1846. We refer you to the accompanying invoices, marked D and E, (the latter per same vessel as invoice B,) for your inspection and return to us. You will see from them that under the supposition that Congress had not legislated on the subject, the American consul at Gothenburg has caused the riks dollar banco of invoice, in which the market value must be expressed, to be changed into American dollars at rates varying with indirect rates of exchange, (there exists no direct commercial rate of exchange between Sweden and the United States, other than as fixed by Congress, May 22, 1846,) affected by the value of Hamburg marks banco or British pounds sterling, in the Gothenburg market.

You will perceive that the documents D, E, and F show a valuation of the riks dollar banco of 39 cents, $41\frac{1}{2}$ cents, and 42 cents, and we refer you to other Gothenburg invoices on file at the custom-house in New York and Boston, which will prove that, by this indirect mode of fixing the value of a currency for which Congress has established an equivalent in American money, duties have been levied on as high a value as 43 cents American

money to the riks dollar banco of Sweden, instead if on 39¾ cents, or, what is the same, on 114⅔ cents per specie dollar, instead of on 106 cents, as the law prescribes.

We now submit to you herewith documents F and G, two invoices of one and the same lot of goods about to arrive at the port of Boston, (invoice F and G shipped on board the same vessel as invoice C,) the currency value at 42c. and 39¾c. respectively. We shall present both invoices F and G to the collector of said port; they differ only in a charge for consular certificate. The goods of invoice C, shipped originally from Stockholm, were reshipped from London in the same vessel, bound for Boston. The consul at Stockholm has valued the riks dollar banco at 39¾ cents, or specie dollar at 106 cents; the consul at Gothenburg has valued the riks dollar banco at 42 cents, or, what is the same, the specie dollar at 112 cents. Both consuls cannot be right, and if you coincide in the view we take of the case, we ask your instructions to the collector of the port of Boston to the effect that:

"The law of May 2d, 1846, having fixed the value of the specie dollar of Sweden at 106 cents, and it being proved that the riks dollar banco is a component part of the specie dollar in the invariable relation of 2⅔ to 1, no consul's certificate is required by law as regards the equivalent of the Swedish to the American currency."

We also desire you to instruct the collectors of the ports of New York and Boston to refund to us the excess of duty paid by us on importations from Gothenburg, in consequence of a valuation of the Swedish currency higher than authorized by law,

We are, with high consideration, dear sir, your ob't serv'ts,

(Signed) NAYLOR & CO.

9 In Court of Claims.

UNITED STATES OF AMERICA:

BARTHOLD SCHLESINGER *et als.*, petitioners,
vs.
THE UNITED STATES OF AMERICA.

And now, by leave of the honorable court, here come the petitioners now interested in the claim in said petition set forth, and in amendment to said petition say:

That William L. King and M. J. O'Connor, two of the petitioners named in the foregoing petition, and at the time of the filing of the said petition partners in the firm of Naylor & Co., have retired from said firm, and have ceased to have any interest whatsoever in the claim specified in said petition; that they are not now members of the said firm, and are now both residing abroad. And also, that George P. Naylor, one of the petitioners in the petition named, has, since the filing of the same, deceased, and that all the interest which he, as well as all the interest which the said King and the said O'Connor had in the claim in said petition set forth, now belongs to the remaining persons named in said petition. And also, that Edmund L. S. Benson, although a naturalized citizen of the United States, is now residing in the city of London, in the United Kingdom of Great Britain and Ireland, and has been residing there ever since the war between the United States of America and the so-called Confederate States of America commenced, and that he has not been within the limits of the United States, or of any one of them, whether loyal or disloyal, for a period of three years or more, and that all the remaining petitioners who now have any interest in said claim, with the exception of Edward B. Huntington, of Boston, in the commonwealth of Massachusetts, and Barthold Schlesinger, now residing in the city of New York, in the State of New York, are British subjects, and

are residing abroad. And they further say that the said Huntington, Schlesinger, King, O'Connor, and Benson have all and every of them borne true allegiance to the government of the United States, and that neither they, or any one of them, or the said Edward Vickers, George Naylor Vickers, George P. Naylor, and Frederick Lehman, or any one of them, have in any way voluntarily aided, abetted, or given encouragement to rebellion against the said government.

NAYLOR & CO.
EDWARD B. HUNTINGTON.

10 UNITED STATES OF AMERICA, *Massachusetts District, ss:*

BOSTON, *Dec.* 28, 1863.

Then personally appeared before me, the subscriber, Edward B. Huntington, of said Boston, one of the above-named petitioners, and one of the firm of Naylor & Co., and made oath to the truth of the foregoing amended petition, subscribed by the said Naylor & Co.

CHAS. LEVI WOODBURY,
Commissioner Court of Claims for Massachusetts.

11 In the Court of Claims, No. 1,604, October term, 1863.

BARTHOLOE SCHLESINGER *et al.*
vs.
THE UNITED STATES.

And now come the United States, by Charles Gibson, their solicitor, and say that the said petition is not sufficient in law, and the United States show to the court here the following causes of demurrer to the said petition:

1. That the petitioner seeks to recover in this action amount of certain duties illegally exacted, as he says, upon goods imported by him into certain ports of the United States, which duties he says were paid by him to the several collectors of customs at those ports. Now, the defendants say that this court has not jurisdiction to hear and determine said claim, inasmuch as Congress has by law, to wit, by the act of February 26, 1845, chap. 22, and other statutes, in pari materia, provided that suit may be brought against the proper collector in all such cases, to ascertain and try the validity and legality of such demand and payment of duties, and to have a trial by jury touching the same, according to the due course of law. Wherefore, the defendants say that the remedy so provided by law excludes the jurisdiction of this court, and this court has not jurisdiction to hear and determine this claim.

2. That the said petition does not aver that the claimant made a protest in writing, signed by him, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof, as required by the said act of Congress of February 26, 1845. Wherefore, the defendants say the said claimant ought not to maintain this action against the United States.

3. That the facts stated in the petition afford no ground of action against the United States.

CHARLES GIBSON, *Solicitor for U. S.*,
By J. D. McPHERSON, *Asst. Solicitor.*

January 6, 1864.

12 In the Court of Claims.

BARTHOLOE SCHLESINGER *et als.*
vs.
THE UNITED STATES.
On demurrer.

And now, to wit, January 25th, 1864, the court, upon due consideration

of the premises, do sustain the said demurrer, and do further order, adjudge, and decree that the said petition be dismissed.

13 *Opinion of the court.*

In the Court of Claims, January 25, 1864.

BARTHOLD SCHLESINGER *et al.*
vs.
THE UNITED STATES.
} No. 1,604.—On demurrer.

Chief Justice CASEY :

These claimants, between November, 1847, and July, 1854, imported into the United States, at the ports of Boston and New York, a large quantity of iron and steel, from the kingdom of Sweden. They aver, in their petition, that the iron and steel so imported were invoiced in Sweden, in the paper currency issued by the State Bank of Sweden, and known as the "rix daler banco," and recognized as legal currency by the laws of that kingdom, with a fixed legal value; that it was a component part of the specie dollar of that contry—two and two thirds rix dalers banco being equal to one specie dollar.

It is further averred that by the act of Congress of the 22d May, 1846, the value of the specie dollar of Sweden and Norway is fixed at one hundred and six cents federal currency, and that the true value of the rix daler banco was thirty-nine and three fourths cents of the money of the United States. It was also set forth that the American consuls erroneously treated the rix daler banco as depreciated currency, and adding thereto the indirect rate of exchange, certified its value to be be from forty to forty-two cents in the money of the United States.

By tables annexed to the petition of the claimant it is shown that these erroneous certificates enhanced the valuation of their importations to the amount of thirty-two thousand five hundred and twenty five dollars and forty one cents, ($32,525 41,) and made the excess of duty paid thereon nine thousand six hundred and nine dollars and seventy-eight cents, ($9,609 78.) They further aver that this last-named amount was improperly assessed upon their importations, and illegally exacted from them, and that it was paid by the collectors into the treasury of the United States, and that they are entitled to recover it as money had and received to their use. They further state that these duties were paid by them without protest, and do not allege that any objection whatever was made to their payment. To this petition the solicitor for the United States has demurred, and has assigned as cause of demurrer—

1st. That this court has not jurisdiction, inasmuch as Congress has by the act of 26th February, 1845, provided that suits in such cases may be brought against the collectors, and that the remedy thus provided excludes all others.

2d. That no protest, as required by that act, was made against the payment of the duties claimed to be recovered back.

3d. That there is no cause of action set forth in the petition.

This demurrer, of course, admits the facts set forth in the petition, and it must therefore be conceded as alleged, that the duties specified were not properly chargeable.

14 1st. The first question is, Has this court jurisdiction of the claim as presented? Being a claim against the United States, founded on the acts of Congress regulating the imposition and collection of duties on imports—on the regulations of the Treasury Department in reference to the same subject—and based upon an implied promise to repay as money erroneously exacted, it appears to us that it comes within the provisions of the acts

conferring our jurisdiction. We also think that a case might arise under the act of 26th February, 1845, in which an action could be sustained in this court against the United States, to try the legality and validity of the duties demanded and paid.

2d. Can there be a recovery against the United States in this court without the written protest required by the act of 1845? Under this act many cases have arisen in the circuit courts, and in the Supreme Court of the United States, against collectors to recover duties alleged to have been illegally exacted, and it has been uniformly held that its conditions and provisions, in regard to protest, must be substantially complied with. In a very recent case the Supreme Court has held that the act was applicable to the case of duties paid between the passage of the act of 3d March, 1839, and the date of its enactment, upon the ground that he who would avail himself of its benefits must comply with its conditions. (Curtis's Adm'x *vs.* Fiedler, 2 Black, 461.) And, so far as suits against collectors are concerned, the question must be considered at rest. But it still remains to be determined whether the act requires a similar protest to enable a party to maintain a suit directly against the United States. We are of opinion that such a protest is as necessary to maintain the suit against the United States in this court as when the collector is defendant; and we shall now proceed to state briefly some of the reasons which have directed us to this conclusion.

We regard the suit authorized by the act to be brought against the collector as a suit virtually against the United States. The act of Congress approved March 3, 1839, required the collectors to pay all moneys received by them for unascertained duties, or for duties paid under protest, into the treasury of the United States. In consequence of this enactment, the Supreme Court of the United States, in the case of Cary *vs.* Curtis, (3 How., 236,) held that no action would lie against the collector to recover for excess of duties imposed or illegally exacted. That act having made it their duty to pay over all such money, they were held to be discharged from all liabilities inconsistent with that duty.

That act, and the interpretation put upon it by the courts, left the importers without any remedy, except to apply to the Secretary of the Treasury to refund to them duties illegally exacted by collectors, or to petition Congress for relief in each case. There was no mode by which they could appeal to the judicial tribunals of the country. It was, in our judgment, to supply this want, and to devise a method of securing a judicial decision between the government and the importer, that Congress enacted the statute of February 26, 1845. Such was the view taken of this statute by Mr. Chief Justice Taney, in the case of Mason & Tullis *vs.* Kane, in the circuit court of the United States for the district of Maryland, where he says: "For this suit, although in form against the collector for doing an unlawful act, is in truth, and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury if the plaintiff recover. And as the United States cannot be sued and made a defendant in a court of justice without their consent, they have an undoubted right to annex to the privilege of suing them any condition which they deem proper. And in the exercise of this power they have granted this privilege in the form of a suit against the collector, where duties are supposed to be overcharged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right in a court of justice, and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent."

The views expressed by the chief justice, in the opinion just quoted, effectually dispose of the assumption that the act was intended as a protection to the collectors. But at the time of the passage of this act the collectors needed no protection; they enjoyed immunity from suit and from liability for anything relating to the collection of duties. If such had been the purpose contemplated by its framers, a mere verbal protest, or a general objection, would have sufficiently apprised them of the intention of the importer to contest the legality of the exaction of the duty, and have put them on their guard, so that they might secure themselves from loss or injury in the matter. In such a case, and for such a purpose, it would scarcely have been deemed necessary to require that the protest should be in writing and signed by the claimant; that it should be at or before the payment of the duties, and should so distinctly point to the specific ground of objection that there could be no mistake in relation to the very ground upon which he placed his notice of suit. But if we regard the act as putting the collector in the place and stead of the United States, and the action as being, in the language of Chief Justice Taney, "substantially between the government and the importer," the objects and purposes of the enactment are perfectly plain and apparent. The suit becomes then, as the statute itself expresses it, an "action at law against such collector or other person acting as such, to ascertain and try the legality and validity of such demand and payment of duties." The only parties who can have any interest in that question are the government and the importer. The collector has no private or personal interest in the question. But because the United States could not be impleaded in the courts, and because it may have been thought impolitic or improper to permit such a suit to be instituted against the United States, the officer concerned in the management of the particular affairs to which the act relates is substituted in their place. No person doubts that where the collector, under the direction of the Treasury Department, exacts a duty, and the importer makes the protest, brings his suit and recovers a judgment which is paid by the collector, that he would be entitled to recover it from the United States, or defalk its amount, in a suit brought by the latter to recover from him other money received by him in his official capacity. Such has been the understanding of the department and the collectors, and such the usage, ever since the passage of the act; all acting upon the understanding and belief that in all such suits the collector is the *nominal*, and the United States the *real*, defendant. The protest is required to warn the officers of the government that the payment of the duties will be contested. It is required to be signed by the claimant, to show that the objection is interposed by a person having a legal right to do so; it is to be made at or before the payment of the duties, and while the goods are still in the possession of the government, and to point out distinctly and specifically the objection, so that the facts necessary to the defence of the government and the correct decision of the case can be ascertained with almost unfailing certainty. If the objection relates to the kind, quality, or amount of goods imported, those matters can then be ascertained by inspection, by weighing, measuring, gauging, enumeration, or appraisement, and thus almost every error of fact that can be alleged against the right to demand the duty can be ascertained almost to a demonstration, and with little trouble and expense. If the objection is one of law, it is equally important that it should be distinctly specified. The collector can then revise his first decision, take legal advice upon the subject, or procure the instructions of the Secretary of the Treasury upon the very point. But it was also intended, in case of a suit, to limit the importer to the grounds distinctly and specifically set forth in the protest. Upon these the government and its officers
16 may be presumed to be prepared. If it were otherwise, an action of

general *indebitatus assumpsit*, for money had and received, might be instituted against the collector, and when the government came prepared to defend one transaction, and one state of facts, and then find a recovery claimed in regard to matters and things entirely different, involving other facts and different principles. Against such general and roving claims the act was intended to guard, not only by requiring the protest, but by confining the party to the objections it contains.

Let us look for a moment at the effect which a decision, such as we are now asked to make, would produce. There has been heretofore no statute of limitations barring claims against the government. If this suit can be sustained, why may not a suit be founded upon every importation that has been made into the country for twenty or thirty years back? Why may not every one of the hundreds of thousands of cases of importations be torn up and overhauled in a suit brought in this court? For the great majority of those transactions stand, doubtless, just like this. The duties were paid, not only without protest, but without any sort of objection, and under the impression and belief of both the importer and the officers of the government that they were properly and legally demanded and paid. If all this can be done after the officers who superintended these collections are out of office or in their graves, when the evidence which might have availed is lost by the efflux of time, or unknown to those whose duty it is to defend these cases, the lot of the government is hard indeed. Deriving, as this nation does, its principal revenues for the ordinary and current expenses of the government from customs, such a course of decision would derange and demoralize our whole financial system. The officers of government could never make any reliable estimate of its means or its liabilities. No Secretary of the Treasury could tell how much of the revenue he had collected in one quarter would be recovered from him by suit in the next, how much of the current year's revenues would be required to pay judgments obtained for alleged mistakes or errors committed twenty years ago. Such a financial system would be hazardous, if not certainly ruinous, to the credit of the best exchequer on earth. And we cannot think that such disorder and confusion were what Congress intended to inaugurate by the passage of the act of 1845, and the acts organizing and establishing this court.

The encouragement that such a construction would give to litigation, and the temptation it would hold out to fraud and perjury, in establishing stale claims upon the government, would be a reason of some weight for believing that Congress did not intend, by the passage of the acts in reference to the Court of Claims, to relieve parties in this situation from the conditions imposed by the act of 1845.

The main argument relied on in support of this class of cases has been that the United States have in their treasury the money of these claimants, illegally imposed and exacted from them, and that it is against equity and good conscience to retain it It would, perhaps, be sufficient to say that this argument is based on a proposition that is by no means admitted, and that we think cannot be proved, and that is the assumption that these duties were illegally exacted. To show that it is without foundation, we need but refer to the opinion of the Supreme Court, as delivered by Mr. Chief Justice Taney in the case of Lawrence *vs.* Caswell, (13 How., 488,) in which he says: "But it is proper to say that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. *Where no such protest is made, the duties are not illegally exacted in the legal sense of the term*, for the law has confided to the Secretary of the Treasury the power of deciding in the first instance upon the amount of duties due upon the im-

portation, and if the party acquiesces, and does not by his protest
17 appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question."

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court, determined to have been an erroneous construction. But money thus paid is not illegally exacted; nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest; nor are they within the principle decided by the court in the case before us."

This case, both by the authority which it bears, as the deliberate opinion of the highest judicial tribunal in the country, and the unanswerable reasons upon which it is based, must, and ought to be, regarded as an end of this controversy. The action of the collector in the assessment and exaction of the duty, under the instructions of the Secretary of the Treasury, is regarded and held by the Supreme Court as the decision of an inferior tribunal, appointed and authorized by the law to decide in the first instance. From that decision the act of 1845 authorizes an appeal, by the importer, to the courts of the country, upon complying with certain conditions required in the act. If the importer does not appeal, or attempts to do so without complying with the stipulated conditions, in either case the decision of the inferior tribunal becomes final and conclusive, and we think it would be difficult to find any recognized judicial authority which would allow its conclusiveness to be questioned in any other suit by either of the parties. This case of Lawrence *vs.* Caswell meets every point of the argument founded upon or derived from the alleged illegality of the exaction of the duty sought to be recovered back, so that nothing further need or indeed can well be added to its force and conclusiveness. It demonstrates that the money has not only not been illegally extorted from the claimant, but that it was a payment made in obedience to and in strict accordance with the law, and according to the arbitrament of those public functionaries to whom the laws of the land intrusted the decision of such cases. That the claimants have not availed themselves of the proper steps required by law to secure a judicial investigation and determination of the matter, is entirely owing to their own neglect. They will scarcely set that up as any ground of recovery.

But it is said that it does not comport with the dignity of this government, nor with the duty it owes to the citizen, to set up a mere technical objection like this to bar a recovery of money paid that was not owing to it. After the views we have already expressed in this opinion, we need scarcely add that we do not regard the defence of want of protest as a mere technical one, but as one of substance and merits, and founded upon the highest considerations of public policy, convenience, and justice. In granting to the importer the right in any case to contest with the government the rate, amount, or legality of the duty imposed, before the courts of the country, it was clearly competent to couple its exercise with a reasonable and proper condition. And if it was right and proper to make such a condition, it surely cannot be wrong to enforce it. The claimant must see, in every such instance, that his failure results, not from either injustice or harshness on the part of the government, but solely from his own negligence. In the case of Bend *vs.* Hoyt, (13 Peters, 263,) the Supreme Court of the United States applied this doctrine of negligence, even before the passage of the act of 1845, to an importer who had his goods entered as cotton gloves, and paid the duties as such upon them.

Some months afterwards he alleged that one or more of the packages contained silk hose, which were entitled to admission free of duty, and brought suit against the collector to recover back the duties so paid.

Mr. Justice Story, in delivering the opinion of the court, says: "The error, if any there has been, has arisen, as we have already stated, from his
18 (the plaintiff's) own negligence; and courts of justice do not sit for the purpose of aiding those who seek redress for supposed mischief resulting from such negligence. Even courts of equity will not interfere to assist a party to obtain redress for an injury which he might by ordinary diligence have avoided; and, *a fortiori*, a court of law ought not, where the other party has, by the very acts or omissions, lost his own proper rights or advantages."

Some stress has been laid on the second section of the act of August 8, 1846, authorizing the Secretary of the Treasury to refund to importers "such sums of money as have been illegally exacted by collectors of the customs, &c., since the 3d of March, 1833." The provisos to the section require that before the Secretary refunds he shall be satisfied, by decisions of the courts of the United States upon the principle involved, that such duties were illegally exacted, and that such decisions shall be adopted or acquiesced in by the Treasury Department. The claimants contend that if the Secretary may refund such duties without protest, *a fortiori*, the court may entertain a suit for the purpose, and that the proviso requires a judicial decision on the principle involved before the Secretary can allow it, and that no decision can be made unless the courts will entertain the suits.

The first section of this act directs the Secretary of the Treasury to refund to certain merchants or importers named therein the excess of duties by them respectively paid. The second section is then added to embrace similar cases to those specifically provided for in the first section. This act, we think, in both sections is entirely retrospective; that the Secretary was only authorized by the act to refund such sums of money "as have been illegally exacted," and not such as might thereafter be illegally exacted; and that the reference to the courts in the provisos was in restraint of the authority of the Secretary of the Treasury, and not for the purpose of enlarging the jurisdiction of the courts. We think it did not repeal or interfere with the act of 1845, except so far as it related to the power of the Secretary of the Treasury to refund in cases where he was entirely convinced, by the judicial determination of the questions, that an excess of duty had been imposed between the 3d of March, 1833, and the date of the act. As to all cases occurring after the date of its passage, it left them subject to all the requirements and provisions of the act of 1845.

We think, also, that the view we have taken of the intention of the legislature in the passage of the act of 1845, is confirmed by the system adopted, or rather completed, in the act of the 3d of March, 1857, section 5, (11 Stat., 195.) By that act the decision of the collector imposing a duty upon any goods is made final and conclusive, unless the importer shall, within ten days after the entry of the goods, give notice to the collector, in writing, of his dissatisfaction with such decision, and shall set forth in such notice, distinctly and specifically, his grounds of objection; and shall, within thirty days after the date of the decision, appeal to the Secretary of the Treasury; and the decision of the Secretary of the Treasury to be final and conclusive, unless suit be brought within thirty days after the date of the decision. These provisions are but the filling up and completion of a system the principles and outlines of which were contained in the act of 1845.

In every light, therefore, in which we can view this matter, we regard the protest as essential to the maintenance of the suit, and the want of it fatal to the claimants' right to recover in this case.

There remains another question, and that is, whether the payment in this case was a voluntary one; whether the money was paid under a mutual mistake of the law. The distinction attempted to be drawn between *ignorance* and *mistake* of law, and holding that money paid in *ignorance* is irrecoverable, while that paid under *mistake or misconstruction* may be sued for and recovered back, is a refinement too subtle to be applied to the every-day business of life. Besides, we should find it in most cases very difficult to ascertain, with any degree of certainty, whether the error arose from ig-
19 norance or misconception. And the very misinterpretation alleged might be the result of ignorance of law in general, or the rules of its interpretation and application.

It is contended that, because these were payments to public officers who had the merchandise of the claimants in their hands, and that they were compelled to pay what was demanded in order to obtain the possession of their goods, that therefore these payments could not be voluntary ones. It is true, where money not demandable of right is claimed *colore officii*, and where the other party objects to its payment, but pays it to obtain the release of his goods, the payment is in no sense a voluntary one. It is clearly compulsory. But where a public officer, with the goods in his hands, presents an account as due, and the other acquiesces in its justice and amount, both believing at the time that the debt is justly and legally due, and the party pays the same, and it afterwards turns out that there was an overpayment, owing to a mutual mistake or misinterpretation of the law under which this payment was made, such a payment has always been held to be a voluntary payment, and cannot be recovered back. Such is the state of facts in the case in hand. The amount paid was believed by both the parties to be the true amount chargeable upon the importations; there was no withholding of the goods to extort payment; no objection made; no official oppression; and the parties stood upon a footing of equality. The claimants presented to the collectors their invoices of importations, with the consular certificates upon them, which are now alleged to be erroneous, and out of which the alleged mistake arises; and, upon the data so presented by themselves, the officers of government made the assessment of duties, and they were paid and received in good faith. The error, it is said, consisted in misapplying the provisions of the act of March 2, 1799, in relation to consular certificates, and the act of May 22, 1846, regulating the value of foreign coins, and this constitutes, as we conceive, an undoubted case of voluntary payment.

It would be useless in this opinion to review the numerous and somewhat conflicting cases upon this subject, to be found in the English and American books. It is sufficient for us that the question has been put at rest by the court of last resort. In the case of Elliott *vs.* Swartwout (10 Peters, 137; 12 Curtis, 46,) the very point is made and decided: "A voluntary payment to a collector under a mistake of law cannot be recovered back." The English cases are reviewed in the opinion delivered by Mr. Justice Thompson, and the principle clearly announced and settled. That judgment has been followed for more than a quarter of a century, and, so far as we know, has not been seriously questioned. (See also Hunt *vs.* Rousmaniere, 1 Peters, 1.) The same doctrine was held by the circuit court of the United States for the eastern district of Pennsylvania, in 1843. (United States *vs.* Clement and Newman, Crabbe's Rep., 499; Carey *vs.* Curtis, 3 How., 236.)

Much stress has been laid in the argument upon the cases of Sturges, Bennett & Co.; H. & F. W. Meyer; Spence, Reid & Co., and several other cases decided some years ago in this court. In those cases the want of a protest was held not to interpose any obstacle to a recovery in this court. And the payments were held not to be voluntary, because made to public officers, and

because they were made upon a mistake or misconception of the law, and not in ignorance of its provisions. We have given to those cases the most careful examination and consideration, but have been unable to coincide with their conclusions. We think the construction there given to the act of 26th February, 1845, is not sustained, either by its terms, the purposes of its enactment, or by the decisions of the courts; and that on the question of the payments being voluntary or otherwise, we regard those decisions as being in direct conflict with the law as laid down by the Supreme Court of the United States. At the time those decisions were made the court consisted of but three judges, one of whom dissented. In the con-
20 clusion here reached the whole five judges agree; so that, of the eight judges who have sat in this court, six of them coincide in the result of this case.

We are, therefore, of opinion that this suit cannot be sustained—

1st. Because there was no protest as required by the act of 26th February, 1845.

2d. Because the payment was made and received under a mutual mistake, and was therefore a voluntary payment, and, as such, irrecoverable.

And for these reasons we sustain the demurrer, and dismiss the petition.

21 In the Court of Claims, January 25, 1864.

B. SCHLESINGER *et al.* vs. THE UNITED STATES. } Law docket. October term, 1863.

LORING, J.:

I think the demurrer in this case should be sustained, for the cause first specified, viz: "that this court has not jurisdiction to hear and determine said claim;" otherwise, I should concur in the opinion on the merits which has been read by the chief justice, and in the conclusive reasoning by which it is supported.

If this court has jurisdiction of this case, it is by virtue of the act of February 26, 1855, creating this court, and by that alone, for no other act confers the jurisdiction or has been cited for it. And whether this court has jurisdiction of revenue cases must be decided upon that act only, without reference to the provisions of the act of 1863, reconstructing this court, which wererequired for its reconstruction, and for the other classes of cases of which this court has unquestioned jurisdiction.

Then the question is, whether, by the act of February 26, 1855, creating this court, the legislature intended that importers should have the election to sue here, or in those courts to which the jurisdiction of cases arising under the revenue laws had been expressly given.

The subject involved the public revenue and individual interests, and was as extended as the territory and the commerce of the country. From its nature and importance, uniformity of decision was essential to it, and by the system of its laws as administered in other courts was assured to it. But if the jurisdiction was given to this court by the act creating it, then this uniformity was endangered, if not prevented, by the establishment of two independent jurisdictions, which might decide differently on the same provisions of law, and on like facts.

It would have been difficult to have contrived a more unnecessary or more noxious inconvenience than this. And I think the purpose of it is not to be imputed to Congress from the general terms of the act, which are abundantly satisfied without it, and which I think are to be construed in reference to the intent of the act, which was to establish a court for the investigation of claims for which there was no tribunal but Congress, and to lighten the

labors of Congress in its disposition of these, and not a court for the trial of causes which could be, and always had been, heard and determined in other courts, to which jurisdiction of them was expressly given.

When this court was created, the revenue laws had been administered, ever since the foundation of the government, by courts, which brought justice to every man's door, held by judges trained in those laws and kindred subjects, and from these an appeal was given to the Supreme Court of the United States. This administration of the revenue laws was required
22 by the subject, and it had fulfilled all the wants of the people, and attained the ends of justice, because it exacted them by its own processes. Thus its courts were courts of justice, holding the power of the country for the enforcement of private rights and the public security; while this court, by the act creating it, was no such thing; it could not render a judgment, but only report an opinion, and that it could not enforce; it had not the functions of a court of justice, and could determine nothing and bind nobody; it could only inform Congress as to matters, the final determination of which belonged to Congress. And I think this limitation of function was a limitation of jurisdiction, and that the act itself precludes the intent, that a large class of cases occurring daily in every port of entry in the country, and which were, and always had been, subject to trial, judgment, and execution in courts of justice, should be brought here, and reported hence to Congress, to add to its labors, by the ascertainment of their facts on testimony, and the adjudication of points of law, and by their final disposition, each by a statutory enactment.

It was essential to the public security that suits should be brought while the facts were recent and accurately remembered, and witnesses, and all the means of defence were attainable. In other courts where the suits were in form against the collector, they were subject to the statutes of limitations of the States, and thus the public defence in that particular was as perfect as that of individuals. But if the jurisdiction was to be here, there would be no such defence, and suits might be brought after any lapse of time on causes of action of which no one in office knew anything. And for this defence a protest, even if requirable here, would be no substitute, for that would only show the importer's objection, and the mode of defence required; but it would not secure the means of defence; it would not detain witnesses for an indefinite time, nor insure their lives, nor their memories, nor their presence when wanted, nor prevent the various embarrassments and difficulties that long delay heaps up against proof, and as to which statutes of limitation are the only efficient security.

As the revenue laws were administered in other courts, every cause of action was tried and definitely settled as to facts where it arose, with all the advantages of vicinage, for which district and circuit courts, with their local jurisdictions, were established, and in a suit against the collector whose personal interests and zeal were thus enlisted in the public defence. But if the jurisdiction was to be here, then cases arising in Bangor, Galveston, and San Francisco, might be tried here on the facts, at a distance from the place of the occurence, and the local knowledge of it, and from its witnesses, and by their depositions instead of their oral examination, and in a suit against the United States in which the collector would not be a party, but merely a witness, without any personal interest whatever.

In other courts where the suit was against the collector he was personally responsible for money collected without right, and his indemnification depended on the equitable consideration of Congress; and it would be justly forfeited if his inattention or fault caused the action against him. This was an inducement to him for the careful and correct performance of his duties, and a security to the public against his neglect or violation of them. But

if the United States were to be liable here for money had and received without right; the fault of their officer would be no defence to them, and they, and not he, would bear the litigation and the consequences ensuing from his misconduct; and in every such case the judgment of this court would deprive Congress of the discretionary power it possessed, and the public of the protection that power afforded.

In other courts cases under the revenue laws were tried, as to facts, by juries taken from a commercial community, and they might be tried by a jury of merchants specially qualified for the purpose. The importance of jury trials in such cases has been emphasized by high judicial authority,
23 and they are expressly provided for by the act of 1845, c. 22d. They are as essential to the public as to individual interests, and if Congress has secured them to the latter by peremptory legislation, it is not to be presumed that it intended to dispense with them as to the former.

The statute of 1845, c. 22, requires, for a suit against the collector, a protest "made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof." This enables the collector not only to reconsider his action, but also to secure evidence and the means of defence while they are within his reach; and it is so absolutely essential to the public security, in the important matter of the public revenue, that suits by importers can be safely maintained nowhere without it. But this statute requirement is, in every particular, in derogation of the common law, even as to a suit against an agent, and is available where the statute applies it, and nowhere else; it never was and cannot be, by any of the rules of the common law or equity, required in a suit against a principal. And with great deference to the opinions that have been delivered here, I think that this protest is and can be required only in suits against collectors, because the statute specifies such suits and no others, and certainly contemplated no others, for there were then no others to be contemplated; and I think the rules of construction do not permit a court to extend its jurisdiction by putting words into a statute which give it an intent the legislature could not have had. If this is so, then the necessary protection this protest secures would be abandoned by giving the jurisdiction here.

It was urged in the argument at the bar that the learned chief justice of the United States, in delivering his opinion in a case in the circuit court of Maryland, said that the suit there against the collector was substantially a suit against the United States; and it certainly was, in the circumstances of that case, in the particular to which he applied his remark; because the money claimed, if recovered, would have been, by the equitable consideration of Congress, paid from the treasury. But the chief justice did not say that a suit against the collector in the circuit court was substantially a suit against the United States in the Court of Claims, or that a protest prescribed by statute for the one attached to the other, any more than a jury trial, or statutes of limitation, or the laws of venue; and if his remark did not involve this, it seems to me to have no applicability to the question here. It certainly had no reference to the jurisdiction of this court, and belongs only to the case in which it was made, for as an abstract or general proposition it would not be correct; for a suit against the collector would not be substantially or in any respect a suit against the United States, where Congress, in its discretion, left him to pay the damages and costs recovered, because they were incurred by his own fault.

And I think that all the legislation on the subject subsequent to the act creating this court contemplates suits against the collectors, and no others. In the important act of March 3, 1857, entitled "An act reducing the duties on imports, and for other purposes," and which substituted ad valorem for

specific duties, and divided imports into two classes—those liable to and those exempt from duty—the 5th section provides that as to what imports are or are not liable to duty, the decision of the collector shall be conclusive, unless the importer makes his protest in ten days, and appeals to the Secretary of the Treasury in thirty days; and that the decision of the Secretary shall be conclusive, "unless suit shall be brought within thirty days after the date of such decision." Now, I think it could not have been intended that importers in Galveston and San Francisco should bring suits in Washington within thirty days after the Secretary's decision here, for the limitation is quite brief enough for a suit in the importers' own district, and I think refers to that only. If this is so, then this act, which made a new revenue system, established by its 5th section a complete system of procedure for the litigation under it, from which this court is excluded.

24 The revenue laws form a system of law elaborately adapted to its subject, and to the courts to which the jurisdiction of the subject has been expressly given. And I think that the powers and means necessary to the administration of this system were not given to this court by the act creating it, and have not been by any other, and that therefore this court has not jurisdiction of this case.

25 In the Court of Claims, January 25, 1864.

BARTHOLD SCHLESINGER *et al.*
vs.
THE UNITED STATES. } Law docket. October term, 1863.

WILMOT, J.:

I concur in the conclusions of the court, except in the point of jurisdiction. Congress has provided a remedy in such cases, and pointed out the steps to be taken by the party aggrieved. That remedy is perfect and ample, and, as it seems to me, reaches every case where duties are improperly demanded and paid. The remedy is by action against the collector, or his legal representatives, in the circuit court for the district where the cause of action arose.

26 And now, to wit, on the 22d day of April, A. D. 1864, and within ninety days after the rendition of judgment in this case, the following notice of appeal was filed with the clerk of the Court of Claims.

Notice of appeal.

In the Court of Claims.

BARTHOLD SCHLESINGER, WILLIAM B. HUNTINGTON, EDWARD L. S. Benson, Edward Vickers, George Naylor Vickers, George P. Naylor, and Frederick Lehmann, doing business under the style of Naylor & Company, claimants,
vs.
THE UNITED STATES, defendants.

To Sam'l H. Huntington, Esq., clerk of the Court of Claims:

SIR: You will please take notice that the above-named claimants appeal from the judgment of the court, rendered on the 25th January, 1864, in the above case against the claimants, and in favor of the United States, to the Supreme Court of the United States.

Your obd't servant,

MILTON ANDROS, *Attorney for Claimants,*
By MORGAN L. OGDEN, *Att'y.*

Washington, April 22d, 1864.

27 In the Court of Claims.

BARTHOLD SCHLESINGER AND OTHERS
vs.
THE UNITED STATES.

I, Sam'l H. Huntington, clerk of the Court of Claims, do hereby certify that the foregoing are true copies of the original petition and amendment thereof, and of the demurrer, and of the judgment of the court thereon, together with the notice of appeal in the above-named cause, as the same appear of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of October, A. D. 1864.

SAM'L H. HUNTINGTON, *Clerk of the Court of Claims.*

Attest: JOS. CASEY, *Ch. J.*

Filed January 30, 1865.